AUSTRALIAN ENERGY COUNCIL

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**2019-22 Review of the Code of Conduct for the Supply of Electricity to Small Use Customers**

The Australian Energy Council welcomes the opportunity to make a submission to Western Australia's Electricity Code Consultative Committee's ('ECCC') consultation paper on *2019-2022 Review of the Code of Conduct for the Supply of Electricity to Small Use Customers* ('Retail Code Review').

The Australian Energy Council ('AEC') is the industry body representing 22 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.

The past twelve months have seen retailers take significant and unprecedented steps to protect their customers as they navigate the ongoing impacts of COVID-19. Retailers have been at the forefront in administering Western Australia's billion-dollar financial support package, supported and adhered to the moratorium on disconnections, and expanded their own hardship programs to accommodate the increasing number of customers experiencing financial difficulties.

This Retail Code Review comes on the back of these efforts and should further strengthen customer protections in Western Australia, if implemented correctly. The AEC supports the approach the ECCC has taken to perform this review, comparing the Code against the National Energy Consumer Framework ('NECF'), but is concerned that some of the changes being proposed appear to be solutions in search of a problem. Noting that the Western Australian energy market operates under a different system and set of rules to the National Electricity Market ('NEM'), seeking alignment with the NECF should be pursued only after there is clear evidence of a market failure and that the benefits of making the regulatory change outweigh the costs. Unless there is an intent for Western Australia to become part of the NEM, alignment for the sake of alignment is neither necessary nor best practice.

In line with this view, the AEC considers that the need for change has, in many instances, not been adequately evidenced or substantiated other than being proposed for "national consistency". While seeking best practice is useful, this should not occur without full consideration of the cost of regulatory intervention, particularly when there is no market failure to address. The intent of the Retail Code is to support customers and increase their protections by specifying minimum service standards *where required*. A higher or different standard in one jurisdiction in itself is not sufficient justification for regulatory

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change in another jurisdiction. Regulatory intervention comes at a financial cost and diverts scarce resources that could otherwise be allocated in providing services that customers value. The imposition of further regulation without demonstrable benefit will, in the short and long term, result in increased costs to retailers which are inevitably passed to customers.

It is well accepted that outcomes-based and risk-based regulation is more efficient and effective than highly prescriptive regulation for both regulators and regulated entities. Risk-based approaches can reduce regulatory burden for compliant entities and should lead to efficient resource allocation by the regulator.[1] The main justifications for the regulation of utilities is to reduce or manage the risk associated with market failure – in Western Australia's electricity context, that might entail unjustifiably high pricing, poor service, outdated and slow technology offerings affecting operations, particularly in the case of monopoly service provision, where in these circumstances regulation can benefit the community by reproducing benefits provided elsewhere by competition and choice, provided that the cost of regulation does not outweigh its benefits.[2]

Introducing prescriptive rules-based regulation (rather than industry standards and best practice guidance with a principle-based approach) will lead to inflexibility, which, in some settings, may unnecessarily increase compliance costs and stifle innovation. In the current electricity market, which is undergoing significant and constant change as part of the transition to cleaner energy, prescriptive rules can quickly become obsolete and require constant adaptation or supplementation that ultimately limit flexibility. In addition, the need to develop rules to cover every possible action or contingency can result in an over-abundance of prescriptive rules resulting in a lengthy and unwieldy Retail Code, where rules that address the most significant risks are obscured/swamped by the extent of coverage/detail. There can also be considerable challenges associated with drafting precise *ex ante* rules.[3]

There are a number of proposals made in the Review that seek to codify a retailer's existing practices (e.g. disconnection moratoriums). Retailers should be encouraged to provide services above mandated standards and not be penalised by having existing services codified. Each new regulatory requirement can involve significant cost in terms of system changes, procedural changes, education, training and communication, control establishment, monitoring and reporting and external audits. In some instances, customer protection will not increase but a retailer's cost impost will definitely increase.

The AEC notes that the ECCC's 104 recommendations do not contain any quantitative assessment of the benefits and costs of the recommendations. The AEC recognises the ECCC is a consultative forum and it is not sufficiently resourced or funded to perform this function. As the Economic Regulation Authority ('ERA') is the decision-maker in relation to the Code's changes it should perform this function, as well as being required to take into account the matters specified in section 26 of the *Economic Regulation Authority Act 2003* (WA). It is not reasonable for retailers to have to substantiate their costs and other imposts when responding to regulatory proposals for change when regulatory agencies face no similar discipline in having to substantiate the case for the

[1] Productivity Commission. 2016. Digital Disruption: What do governments need to do? Australian Government. Canberra, Australia. p123.
[2] Best Practice Utility Regulation. July 1999. Utility Regulators Forum Discussion Paper. P2.
[3] Australian Energy Market Commission. Dr Christopher Decker. March 2020. Consumer protection frameworks for new energy products and services and the traditional sale of energy in Australia. P47

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change. It also means retailers are often required to "prove a negative" (i.e. why the changes should *not* occur) rather than regulators making a positive case (i.e. why the changes should occur). This goes against ordinary and best practice.
The AEC therefore asks for the ERA's final decision on the Code's amendments to include a publication of the costs and benefits of the proposed changes as well as an assessment in accordance with the Act's requirements.

Noting this, the AEC provides the following comments in response to the ECCC's questions:

| **Question** | | **AEC's Response** |
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| 1 | Contracting out of the Code<br><br>a) Should any of the clauses listed in clause 1.10 be removed from clause 1.10? If so, should any of those clauses instead include the words 'unless otherwise agreed'?<br><br>b) Should the words 'unless otherwise agreed' be removed from any clauses that currently include those words? If so, should any of those clauses be added to clause 1.10? | Unless a market failure has been identified, which from the AEC's reading of the report there has not been, the AEC does not support this change because it will unnecessarily limit the amount of flexibility customers have when entering into a contract. Providing customers with flexibility as to the content and nature of their retail contract enables retailers to customise a contract according to the customer's wants and interests. It is an important feature of the capacity of retailers to differentiate their services from one another.<br><br>This obligation, and the obligations considered in question 2, will become increasingly important for customers as technology allows for more innovative energy products and modes of service delivery. Enabling retailers and customers to agree on more beneficial terms is a critical enabler for a future retail market. |
| 2 | Should the Code be amended to require that, if one or more Code clauses do not apply or apply differently in a customer's non-standard contract, the customer is informed of this before they enter into the contract? | The AEC supports retailers providing clear and accurate information to their customers, particularly in instances where customers are signing up to non-standard contracts.<br><br>However, the delivery method and form of that information should not be covered by regulation, and instead, retailers should be encouraged to deliver positive experiences to each customer, based on their unique needs. Regulation will necessarily result in a lowest common denominator approach being taken, to the detriment of customers overall. |

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| 3 | The ECCC considers that retailers should have to notify customers with a fixed term contract that their contract is about to end. The ECCC seeks feedback as to whether:<br><br>a) This matter should be addressed in the Code or in the Electricity Industry (Customer Contracts) Regulations 2005.<br><br>b) If the matter is addressed in the Code, should the new provision follow rule 48 of the NERR? | The AEC does not have a view on this. |
| 4 | a) Is the amount of information that must currently be included on a bill appropriate? Could some of the minimum bill items be removed from clause 4.5, or should additional information be included on the bill?<br><br>b) Should clause 4.5 be amended to allow retailers to provide (some of) the information in different formats for customers who have agreed to receive their bill electronically? | The AEC recently undertook some internal research among its members as part of a response to an Australian Energy Market Commission ('AEMC') consultation about bills in the NEM. The purpose of the research was to better understand how customers retrieve information and what role the bill plays in this.<br><br>Our research suggests it is antiquated for regulation to presuppose that customers only obtain information via their electricity bill. The bill has instead become one of multiple information sources that customers rely on, alongside digital services like a retailer's website and mobile app. The bill is most commonly used by customers as a tax invoice to obtain primary billing information, namely: the amount owed, when payment is due, and available payment options, including financial assistance. While it is still useful for some other primary information to remain on the bill (e.g. contact details for faults, emergencies or interpretation services), there should be options for non-primary information to be provided through other means, so long as there is agreement between the retailer and customer.<br><br>The AEC supports leveraging the growing customer uptake of digital services and allowing customers who prefer electronic bills to receive customised information from their retailers. |

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| Question | | AEC's Response |
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| | | The AEC's full submission can be found here: https://www.energycouncil.com.au/media/690781/20201022-aec-submission-to-better-bills-consultation-paper.pdf. |
| 5 | Should the Code be amended to require retailers to offer a payment extension and an instalment plan to all residential customers? | The AEC supports steps to require retailers to offer payment extensions and instalment plans to all customers who advise they are experiencing payment difficulty. However, the drafting of this question suggests retailers should *offer* this plan proactively, rather than awaiting a request.<br><br>This is problematic and would significantly increase costs for little customer benefit. The AEC encourages the ERA to amend the wording of this obligation if it intends to proceed, instead requiring retailers to provide support to all customers experiencing payment difficulty who seek assistance.<br><br>It should also be clarified that retailers are not expected to apply a payment extension and instalment plan concurrently. |
| 6 | Should the Code be amended to require retailers to offer bill smoothing to all residential customers as a form of assistance? | The AEC supports retailers developing alternative payment methods for their customers. In the NEM, retailers have developed a range of approaches that encourages customers to pay their bill in instalments prior to it falling due, in a manner that aligns with their own income cycles.<br><br>However, regulating bill smoothing as a concept (as is required in the NECF for Standard Retail Contracts), decreases the ability for retailers to tailor payment options that align with their systems and processes – ultimately diminishing their value and increasing costs. Bill smoothing products in the NEM are limited due to the drafting of the regulations.<br><br>In future reviews, the AEC encourages the ERA to monitor the continuing development of flexible payment options, and identify if a principle based requirement might be beneficial in WA at that time. |

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| 7 | Should the Code be amended to require retailers to offer an instalment plan to customers who the retailer otherwise considers are experiencing repeated difficulties in paying their bill or require payment assistance? | Proactive steps to offer assistance have been considered in both the NECF and Victoria, with little consensus as to their customer benefits. The costs of enforcing prescriptive proactive assistance are high, and while customers who seek assistance should be able to do so as easily as possible, there is limited evidence to suggest that customers who need assistance would be benefited by more information from their retailer.<br><br>Retailers are already required to provide customers with a number of pieces of information prior to undertaking a disconnection, including sending reminder and disconnection warning notices. These notices provide information for customers about their bill, as well as the availability of support.<br><br>The AEC considers that this information remains valuable and encourages the ERA to continue to seek to develop regulations that support engagement between retailers and customers, in a way that is beneficial to both parties. |
| 8 | a) Should retailers continue to be able to amend a customer's instalment plan without the customer's consent?<br><br>or<br><br>b) Should clauses 6.4(2) and (3) of the Code be amended to clarify that a retailer cannot amend an instalment plan without:<br><br>(i) consulting the customer?<br><br>or<br><br>(ii) obtaining the customer's consent? | The AEC considers that allowing retailers to unilaterally amend instalment plans is in a customer's best interest. In conjunction with the issues raised in Q10, a customer who consumes more energy than is expected, or fails to repay an instalment plan before a new bill is issued, is likely to need an amended plan. If this amended plan does not suit the customer, they are able to seek a revision.<br><br>Absent this clause, a retailer who is unable to contact a customer would be required to cancel a plan – potentially increasing the risk of disconnection. |

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| 9 | Should the Code be amended to include one or more of the assistance measures that Victorian retailers must offer to their customers under clauses 77 to 83 of the Victorian Energy Retail Code? | The AEC opposes the suggestion to include these sections of the Energy Retail Code in the Retail Code. These provisions capture the tailored assistance obligation in the Victorian payment difficulties framework. The PDF is designed as an end to end entitlement for customers experiencing difficulty, intended to carefully balance the needs of customers to remain connected, with their obligations to pay for energy consumed.<br><br>The proposal to regulate only the tailored assistance component of the PDF in WA is likely to have unintended consequences and should not be implemented without careful consideration of the broader impacts on both retailers and customers. |
| 10 | Should clause 6.7 be amended:<br><br>a) by providing that a retailer must give reasonable consideration to offering a (revised) instalment plan if the customer informs a retailer that they cannot meet the conditions of their payment extension or instalment plan?<br><br>or<br><br>b) by providing that a retailer must offer a (revised) instalment plan if the customer<br><br>reasonably demonstrates to a retailer that the customer cannot meet the conditions of their payment extension or instalment plan?<br><br>or<br><br>c) consistent with clause 30(4)(b) of the Water Code? | The AEC considers that the water code provides a useful starting point in identifying the appropriate balance to ensure flexibility for customers, while retaining the ability of retailers to collect unpaid energy debts.<br><br>Customers who are experiencing difficulty meeting their agreed instalment plan should be required to contact their retailer and request a revised plan, and a retailer should be required to give reasonable consideration to that request.<br><br>However, the AEC does not consider it appropriate that a retailer "must offer" a revised plan. This risks the retailer being required to provide unlimited revisions to a customer, in particular in circumstances where the level of debt is increasing. The AEC encourages the ERA to consider providing retailers with the ability to refuse to revise a plan if the customer has previously broken two instalment plans, as is allowed in the NECF. |

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| 11 | Should the Code prohibit disconnection of an affected customer's supply address?<br><br>If so, what period should disconnection action be prohibited for? | The AEC supports the ERA's proposed changes to increase protections for customers experiencing family violence. It is critical that tailored support is provided to customers based on their own specific needs, that ensures their ongoing safety.<br><br>However, the AEC does not see the need for an overarching disconnection prohibition for all customers experiencing family violence. Whilst this might be a necessary protection for one customer, it may not be for another. The AEC encourages the ERA to take a more principled position, requiring retailers to consider the individual needs of a particular customer, which may include protection from disconnection. |

With respect to the ECCC's recommendations, the AEC notes:

- **Draft recommendation 26 – Obligation to replace estimated bill:** For this requirement to be practical, a corresponding obligation needs to be placed on the distributor to provide an actual reading to the retailer. Without the distributor having such an obligation, the retailer faces regulatory uncertainty as to whether it has done enough to comply.
- **Draft recommendation 47 – Retailer assessment of whether customer is experiencing financial hardship:** Requiring retailers to perform their own assessment of whether a customer is experiencing payment difficulty or financial hardship is unreasonably burdensome, especially for smaller retailers. It will mean each staff member must be properly trained to handle what is quite often a very sensitive matter for the customer; most retailer workers do not have a background that provides the skills for handling such matters meaning this training will likely be expensive and time-consuming. It will also likely be inefficient given the everyday operations of a business: retail workers take leave, sick days, turnover of staff, etc. Noting the challenges financial counsellors are facing, the AEC believes a more appropriate solution would be for there to be a central entity of professional staff with the capabilities to perform these assessments that each retailer can refer to.
- **Draft recommendation 59 – Minimum disconnection amount:** Noting that the $300 threshold has been proposed to align with the NECF, the AEC believes the amount should be adjusted to $200 to reflect the different billing cycles in Western Australia (2 months) compared to the NEM (3 months).

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Any questions about our submission should be addressed to Graham Pearson, Western Australia Policy Adviser by email to graham.pearson@energycouncil.com.au or by telephone on 0466 631 776.

Yours sincerely,

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